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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 23, 2017
85th Legislature, Number 79
The House convenes at 10 a.m.
Part Two

Seventy-three bills and three joint resolutions are on the daily calendar for second-reading consideration today. Bills on the General State Calendar that are analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Today is the last day for the House to consider Senate bills and joint resolutions, other than local and consent, on second reading on a daily or supplemental calendar.



Dwayne Bohac
Chairman
85(R) - 79

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 23, 2017

85th Legislature, Number 79

Part 2

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SUBJECT: Prohibiting maintenance of certification requirements for physicians

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Price, Sheffield, Burkett, Coleman, Guerra, Klick, Oliverson,
Zedler

1 nay — Cortez

2 absent — Arévalo, Collier

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: For — Steven Croft, Association of American Physicians and Surgeons,
Texas Chapter; Sheila Page, Texas Association of American Physicians
and Surgeons; Kim Monday, Texas Medical Association; Sara Austin;
(*Registered, but did not testify*: Christine Yanas, Methodist Healthcare
Ministries of South Texas; Dan Hinkle, Texas Academy of Family
Physicians; Bobby Hillert, Texas Orthopaedic Association)

Against — Barry Smith, American Board of Medical Specialists; George
Wendel, American Board of Obstetrics and Gynecology; Mary Brandt and
Subhasis Misra, American College of Surgeons; Daniel Dent, South Texas
Chapter of American College of Surgeons; Donald Phillips; (*Registered,
but did not testify*: Maureen Milligan, Teaching Hospitals of Texas; Joe
Garcia, University Health System)

On — Cesar Lopez, Texas Hospital Association; Scott Freshour, Texas
Medical Board; Adam Smith, Texas Osteopathic Medical Association;
(*Registered, but did not testify*: Juliana Kerker, American Congress of
Obstetricians and Gynecologists-Texas District)

DIGEST: CSSB 1148 would prohibit certain hospitals, health facilities, and
managed care insurance plan issuers from differentiating between
physicians based on whether the physician had maintained his or her
board certification through periodic recertification. The bill also would
prohibit the Texas Medical Board (TMB) from requiring maintenance of

certification as a condition for physician licensure or registration, and would require TMB to study whether to recognize an entity to provide maintenance of certification for Texas physicians.

Discrimination based on maintenance of certification. The bill would prohibit the following facilities from differentiating between physicians based on a physician's maintenance of his or her board certification, as defined by the bill:

- state-licensed hospitals, state-licensed health facilities, and private mental health hospitals, if the facility or hospital had an organized medical staff or a process for credentialing physicians;
- state-owned or state-operated hospitals; or
- an institution or program that was owned, operated, or licensed by the state or a political subdivision of the state, including an institution or program that received state financial assistance, if the institution or program had an organized medical staff or a process for credentialing physicians on its staff.

The bill would prohibit a managed care insurance plan issuer from differentiating between physicians based on whether the physician had maintained his or her board certification with regard to:

- paying the physician;
- reimbursing the physician; or
- directly or indirectly contracting with the physician to provide services to enrollees.

Exceptions for national certification requirements. The bill would allow a managed care insurance plan issuer, a hospital, or health facility to differentiate between physicians based on a physician's maintenance of certification only if the hospital or facility's legal designation, certification, or accreditation by a national certifying or accrediting organization of a hospital or health facility was contingent on the hospital or facility requiring a specific maintenance of board certification for physicians seeking staff privileges or credentialing at the hospital or facility.

Study. The bill would require TMB to use existing funds to study, in consultation with state agencies and groups chosen by the board, whether to recognize an entity to provide maintenance of certification for Texas physicians. The study would begin no later than January 1, 2018, and its results would be posted on TMB's website. If the study found that TMB needed to recognize an entity to provide certification maintenance, SB 1148 would authorize the board to develop and implement a program to recognize such entities.

Licensure requirements. The bill would prohibit TMB from requiring maintenance of certification as a requirement for registering with the board or being licensed to practice medicine.

Effective dates. The bill would take effect January 1, 2018.

**SUPPORTERS
SAY:**

CSSB 1148 would prohibit hospitals and health plans from requiring physicians to complete burdensome and expensive maintenance of certification requirements as a condition of practicing at a hospital or being reimbursed by a health insurance plan. Maintenance of board certification is a relatively new requirement to practice at many hospitals and facilities that is in addition to annual continuing education required by the Texas Medical Board (TMB) as part of the physician licensing process.

Hospitals and health plans should not be allowed to discriminate against licensed physicians who have a board certification but choose not to spend thousands of dollars to complete additional maintenance of certification requirements, which may be required for each specialty in which they are board certified. Many physicians who were board-certified before the 1990s were grandfathered in under these new maintenance of certification requirements, creating a tiered system in which younger physicians have to spend thousands of dollars on maintenance of certification to practice at a hospital or be reimbursed, but older physicians do not. Maintenance of certification has not been proven to improve the quality of patient treatment, and hospitals already allow older physicians to practice at their facilities without this requirement.

The bill would require TMB, rather than the Legislature, to study whether to designate an entity to provide maintenance of certification because the board, as the physician-licensing agency, is better equipped to conduct the study. The bill would require the board to consult with state agencies and other entities to avoid conflicts of interest.

The bill also would allow exceptions to the prohibitions against discrimination related to maintenance of certification if a hospital or facility needed to require physician maintenance of certification as a condition of the facility's national certification or accreditation.

**OPPONENTS
SAY:**

CSSB 1148 would undo existing rules that hospitals have adopted related to credentialing requirements for physicians who practice at those hospitals. Hospitals have an interest in having the most highly trained physicians on their staff, and facilities should be allowed to require maintenance of certification if they believe it improves the quality of treatment for their patients.

The bill should require the Legislature to complete the study related to maintenance of certification because it would present a conflict of interest for the Texas Medical Board.

SUBJECT: Property tax exemption for surviving spouses of certain first responders

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murr,
Raymond, Shine, Springer, Stephenson

0 nays

1 absent — Murphy

SENATE VOTE: On final passage, March 13 — 30-0

WITNESSES: *On House companion bill, HB 2524:*
For — Byron Colston, Cops 4 Cops; (*Registered, but did not testify:*
Arianna Smith, Combined Law Enforcement Associations of Texas
(CLEAT); Frederick Frazier, Dallas Police Association; David Sinclair,
Game Warden Peace Officers Association; Ray Hunt, Houston Police
Officers Union; Allen Blakemore and Casey Haney, State Firefighters'
and Fire Marshals' Association; Julia Parenteau, Texas Association of
Realtors; Noel Johnson, Texas Municipal Police Association; Deborah
Ingersoll, Texas State Troopers Association)

Against — None

BACKGROUND: Government Code, ch. 615 governs financial assistance to eligible
survivors of law enforcement officers, firefighters, and certain others who
died as a result of injury sustained in the line of duty. Sec. 615.003 lists
those whose survivors are eligible for this state financial assistance.

DIGEST: SB 15 would entitle the surviving spouse of a first responder who was
killed or fatally injured in the line of duty to a property tax exemption of
the full value of the surviving spouse's homestead if the spouse:

- was an eligible survivor for purposes of Government Code, ch. 615
as determined by the Employees Retirement System of Texas; and
- had not remarried since the death of the first responder.

The exemption would apply regardless of the date of the first responder's death. The exemption also could follow the surviving spouse to a new homestead but would be limited to the dollar amount of the exemption for the first qualifying homestead in the last year it was received.

The bill also would make certain other changes to conform with the new tax exemption.

SB 15 would take effect January 1, 2018, contingent on voter approval of the constitutional amendment proposed by SJR 1, authorizing the Legislature to provide for a property tax exemption from of all or part of the market value of the homestead of the surviving spouse of a first responder who was killed or fatally injured in the line of duty. It would apply only to a tax year beginning on or after that date.

**SUPPORTERS
SAY:**

SB 15 would extend the same well deserved property tax exemption given to surviving spouses of veterans and disabled veterans to surviving spouses of first responders. The spouse of a fallen first responder loses a source of income, which can jeopardize the spouse's ability to pay property taxes and could ultimately affect the ability of surviving spouses to maintain their homesteads. SB 15, in conjunction with voter approval of SJR 1, would help ensure that families in these situations were not forced to sell their homes due to this sudden property tax burden. The tax exemption would be appropriate considering the significant sacrifices made by these families. The bill would apply only to survivors who already were eligible for financial assistance under state law.

**OPPONENTS
SAY:**

SB 15 would continue a pattern of giving tax exemptions to specialized groups of people, when instead the Legislature should focus its efforts on reducing the aggregate property tax burden. Exempting a specific category of people, regardless of how deserving, results in an increased tax burden on other homeowners.

NOTES:

SB 15 is the enabling legislation for SJR 1 by Campbell, which is set for second-reading consideration on today's Constitutional Amendments Calendar.

According to the Legislative Budget Board's fiscal note, SB 15 would have a negative impact of \$4,000 to general revenue related funds in fiscal 2018-19, with costs nearing \$1 million in each subsequent fiscal year to offset lost school district property tax revenue with state money through the school funding formulas. The bill is projected to have a negative fiscal impact on units of local government.

A companion bill, HB 2524 by Fallon, was reported favorably by the House Ways and Means Committee on May 3. Another companion, HB 570 by Button, was left pending after a public hearing of the House Ways and Means Committee on April 26.

SUBJECT: Changing the procedures for ejecting or refusing entry to school grounds

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Gooden, K. King,
Koop, Meyer, VanDeaver

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, May 15 — 29-2 (Buckingham, Perry)

WITNESSES: No public hearing

BACKGROUND: Education Code, sec. 37.105 allows a public school board of trustees to deny entry on school property to a person without legitimate business there and to eject any undesirable person from the property if the person refuses to leave peaceably on request.

Sec. 37.001 requires a public school district board of trustees to adopt a local student code of conduct and specifies its required contents. The code of conduct must be posted and prominently displayed at each campus or available for review at the principal's office.

Concerns have been raised that some school districts are excluding parents of children in special education programs from participating in planning meetings.

DIGEST: CSSB 1553 would change the requirements for ejecting or refusing entry to persons from school district property. A school administrator, school resource officer, or school district peace officer could eject or refuse entry to a person only if the person refused to leave peaceably on request and:

- posed a substantial risk of harm to any person; or
- behaved in a manner that was inappropriate for a school setting and persisted in that behavior despite having received a warning from

the officer or administrator that the behavior was inappropriate.

The bill would require districts to maintain a record of each verbal warning issued that included the name of the person who was warned and the date of issuance. A person could not be refused entry to school district property under the provisions in the bill for more than two years.

If a parent or guardian of a child enrolled in a school district was refused entry to the district's property, the district would be required to accommodate the parent or guardian to ensure that the parent could participate in the child's admission, review, and dismissal committee or placement team in accordance with the federal Rehabilitation Act of 1973.

The Commissioner of Education would adopt rules to implement the bill's provisions and to establish a process for a person to appeal to the board of trustees the decision of school personnel to eject or refuse entry to a person.

School districts would be required to provide each person who was refused entry to or ejected from school district property written information explaining the process for appeal. Each district and campus would have to post information on its website about the conditions for refusal of entry and the appeal process. This information also would be a required element of each school district's student code of conduct.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 school year.

SUBJECT: Revising state training requirements for purchasing, contract management

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Cospers, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Walle

0 nays

4 absent — Capriglione, S. Davis, Dukes, Wu

SENATE VOTE: On final passage, May 8 — 28-3 (Bettencourt, Hall, V. Taylor)

WITNESSES: *On House companion bill, HB 1695:*

For — None

Against — None

On — (*Registered, but did not testify:* Amy Comeaux, Bobby Pounds, Jette Withers, and Robert Wood, Comptroller)

DIGEST: SB 255 would add to training requirements for state agency employees on purchasing, contract management, and contract negotiations. It would transfer certain provisions in various statutes relating to the training of governmental entities and vendors to the State Employees Training Act (ch. 656, subch. C).

Comptroller training. The bill would require the Comptroller of Public Accounts to develop and provide a purchasing and contract management training program to meet the needs of state agencies. The comptroller would be authorized to assess a fee for a training program in an amount sufficient to recover costs.

The comptroller would be required to maintain a regular schedule of classes to accommodate the estimated number of employees requiring

purchasing or contract management training, as reported by state agencies. The comptroller could use staff or contract with private or public entities, including state agencies, to conduct the training.

The bill would remove the requirement that the comptroller's training and certification of agency purchasing personnel and vendors consist of at least three levels of training, with certain elements included in each level. Instead it would require that training on contract purchasing include negotiation methods, writing specifications, criteria for determining best value for the state, evaluation criteria, formal and informal bidding methods, and complex negotiations. The comptroller would be required to certify a state agency employee as a certified purchaser when the employee had completed the required training and passed a written examination.

Contract management training would include maintaining required documentation, creating risk evaluation and mitigation strategies, planning for potential problems, developing statements of work, and evaluating performance. The comptroller could administer an abbreviated training program that met the relevant training requirements for agency employees other than contract managers who had contract management duties. Institutions of higher education would be exempted from the bill's contract management training provisions.

Agency training. A state agency, in consultation with the comptroller, could develop agency-specific purchasing and contract management training instead of or as a supplement to the comptroller's training. An employee who participated in an agency-specific training program would remain subject to applicable certification requirements established by the bill.

Agency personnel directly involved in contract negotiations for the purchase of information resources technologies would be required to complete training developed by the Department of Information Resources. Training provided by the department would include information on how to use contracts for the purchase of information technology commodity items.

State agencies that spend more than \$5,000 per fiscal year for a training and education program for any individual administrator or employee would be required by August 31 of that fiscal year to report to the Legislative Budget Board a list of administrators and employees who received training, the amount spent on each one, and the certification each one earned through the training.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

SB 255 would address concerns about the management of state contracts by improving training for procurement and contract management personnel. Better training would lead to improved compliance with state purchasing and contracting requirements. The bill would require training in areas identified by the State Auditor's Office as weaknesses for state agencies, such as determining best value for the state. It would consolidate scattered training requirements into a single Government Code chapter for easy reference.

**OPPONENTS
SAY:**

SB 255 would grow government by mandating training requirements on the comptroller and state agencies. Some of the training requirements would duplicate programs already in place for purchasing and contracting employees. The provision allowing the comptroller to charge state agencies for training would amount to an unnecessary government-to-government transfer of funds.

NOTES:

A companion bill, HB 1695 by Shaheen, was left pending following a public hearing in the House Appropriations Subcommittee on Budget Transparency and Reform on April 4.

SUBJECT: Allowing chiropractors to form certain joint business entities

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Collier, Cortez, Guerra, Klick, Zedler

0 nays

1 absent — Oliverson

SENATE VOTE: On final passage, March 22 — 29-0

WITNESSES: For — Chad Carpenter and Kevin Kanz, Texas Chiropractic Association

Against — None

BACKGROUND: Business Organizations Code, sec. 22.056 permits doctors of medicine and osteopathy licensed by the Texas Medical Board and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners to form jointly owned corporations that:

- conduct research for public interest in medical science, medical economics, public health, sociology, or a related field;
- support medical education through grants or scholarships;
- develop individual or institutional capabilities in the study, instruction, or practice of medicine;
- deliver health care to the public; or
- instruct the public about medical science, public health, hygiene, or a related manner.

Sec. 152.055 allows licensed podiatrists and doctors of medicine and osteopathy to form a jointly owned partnership to perform a professional service that falls within their scope of practice. Sec. 301.012 permits these licensed practitioners to form and own a jointly owned professional association or professional limited liability company to perform a professional service that falls within the scope of their practice.

The authority of licensed medical doctors, osteopathic physicians, or podiatrists who form one of these joint entities is limited by the scope of practice of each, and practitioners may not exercise control over another practitioner's clinical authority granted by their respective licenses.

Observers have recommended encouraging equal access to entry into the medical industry by allowing licensed chiropractors to form the same jointly owned business entities as podiatrists and doctors of medicine and osteopathy.

DIGEST: SB 679 would permit a chiropractor licensed by the Texas Board of Chiropractic Examiners to form a jointly owned partnership, professional association, or professional limited liability company with licensed practitioners including medical doctors, osteopathic physicians, or podiatrists to perform a professional service that fell within the scope of their practice. Licensed chiropractors also could form a jointly owned corporation to conduct certain medical research, issue grants and scholarships for medical education, develop certain medical capabilities, deliver health care, or educate the public.

The authority of chiropractors would be limited by the scope of their practice, and chiropractors could not exercise control over other practitioners' clinical authority granted by their respective licenses.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES: A companion bill, HB 3820 by Dale, was referred to the House Committee on Public Health on March 30.

SUBJECT: Requirements for public school instructional materials, material lists

COMMITTEE: Public Education — favorable, without amendment

VOTE: 7 ayes — Huberty, Bohac, Gooden, K. King, Koop, Meyer, VanDeaver

2 nays — Bernal, Deshotel

2 absent — Allen, Dutton

SENATE VOTE: On final passage, May 4 — 31-0

WITNESSES: For — None

Against — (*Registered, but did not testify*: Katherine Miller, Texas Freedom Network)

On — Von Byer, Texas Education Agency; Monica Martinez; (*Registered, but did not testify*: Kara Belew, Texas Education Agency)

BACKGROUND: Education Code, sec. 31.023 requires the State Board of Education (SBOE) to adopt a list of instructional materials for each subject and grade level, which must contain material covering at least half of the Texas Essential Knowledge and Skills elements for the subject, be free from factual errors and meet certain other requirements. Sec. 31.035 allows SBOE to adopt supplemental instructional materials not on the list under sec. 31.023 if they meet certain criteria.

19 TAC, part 2, chap. 66, subch. B governs the state adoption of instructional materials. Before instructional materials may be adopted by the SBOE, the materials must be evaluated by a state review panel that makes certain determinations, including whether essential knowledge and skills are covered in the instructional materials. The panel is made up of appointed members including academic experts, educators, parents, and business and industry representatives.

DIGEST: SB 801 would require each instructional material on the instructional

material list adopted by the State Board of Education (SBOE), or supplemental material adopted by SBOE, to be:

- suitable for the subject and grade level for which the instructional material was submitted; and
- reviewed by academic experts in the subject and grade level for which the instructional material was submitted.

The bill would take effect September 1, 2017, and would apply only to an instructional material list or supplemental instructional material adopted on or after that date.

**SUPPORTERS
SAY:**

SB 801 would provide the State Board of Education (SBOE) with a greater ability to consider and address suitability concerns with instructional materials. Current law largely limits the board to ensuring materials are free from factual errors and contain at least half the elements of the Texas Essential Knowledge and Skills (TEKS). The bill would allow the SBOE to reject materials that were deemed not to be age appropriate, avoiding potential lawsuits.

If school districts were concerned about a political or ideological bias in instructional materials, they would not be obligated to purchase instructional materials adopted by the SBOE. Local school districts are free to purchase any non-adopted instructional materials that meet TEKS requirements, providing flexibility for schools to purchase instructional materials as they see fit.

While state review panels may evaluate the appropriateness of instructional materials, that ability also should be exercised by elected SBOE members, rather than just the Commissioner of Education's appointees.

**OPPONENTS
SAY:**

SB 801 would expand the SBOE's involvement in the adoption of instructional materials, opening the door for state board members to impose their political and ideological views on the instructional material adoption process. Instructional materials already are reviewed by a state review panel that determines whether materials are suitable for a subject and grade level.

NOTES: A companion bill, HB 1857 by K. King, was left pending after a hearing of the House Committee on Public Education on April 25.

SUBJECT: Expanding certain powers and duties of public school governing bodies

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Huberty, Allen, Bohac, Deshotel, Gooden, K. King, Koop, Meyer, VanDeaver

1 nay — Bernal

1 absent — Dutton

SENATE VOTE: On final passage, April 26 — 29-2 (Hall, Zaffirini), on Local and Uncontested Calendar

WITNESSES: For — Phil Gore, Texas Association of School Boards; (*Registered, but did not testify*: Kristi Hassett and Kronda Thimesch, Lewisville ISD Columba Wilson)

Against — Steve Swanson; (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Barry Haenisch, Texas Association of Community Schools; Dee Carney, Texas School Alliance)

On — Silvia Martinez; (*Registered, but did not testify*: AJ Crabill, Texas Education Agency)

BACKGROUND: Concerns have been raised that too few school boards and charter school governing bodies have been able to take advantage of recent technological advances and new governance strategies for improving oversight of school district operations and student achievement. Some suggest providing an online tool could provide the opportunity to leverage those advances and strategies.

DIGEST: SB 1566 would revise certain powers and duties of public school boards and the governing bodies of open-enrollment charter schools, including giving them data to measure the academic achievement and tools to improve board oversight.

Academic achievement. The bill would specify that a school board or governing body of an open-enrollment charter school would be required to provide oversight regarding student academic achievement and strategic leadership for maximizing student performance.

The Texas Education Agency, by request of the board of trustees of an independent school district, would be required to create a website that board members and campus personnel could use to review campus and district academic achievement data.

District information would be updated quarterly and sorted by campus, grade, sex, race, academic quarter or semester, and school year in the following categories:

- student academic achievement and growth;
- teacher and student attendance; and
- student discipline records.

The information provided would allow a board member to compare the district's academic performance with that of peers. Districts would be required to provide requested information to the commissioner for this purpose in a manner that protected confidential data while still allowing public access to public information.

TEA could contract with a private entity if necessary to meet these requirements, and the commissioner would be authorized to adopt rules.

Board improvement and evaluation tool. The bill would require the commissioner to develop a board of trustees improvement and evaluation tool, which would be research-based and designed to assist a school district in improving board oversight and academic achievement.

A school board could determine whether to use the evaluation tool. If the district was subject to interventions or sanctions related to deficiencies in accreditation status or unsatisfactory academic performance or financial accountability, the commissioner could order the district to use the tool.

The bill would make certain other changes to the powers and duties of

boards and governing bodies, including that it would:

- require a school board member to complete at least three hours of training provided every two years by the State Board of Education on evaluating student academic performance.
- authorize a school board to require certain district staff, including the chief business official or curriculum director, to appear at an executive session of the board or to testify at a public hearing; and
- establish deadlines that districts would have to follow in providing information to a member of the board of trustees on request.

The bill would take effect September 1, 2017.

SUBJECT: Expanding choice of law and venue for certain construction contracts

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Smithee, Farrar, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

2 absent — Gutierrez, Hernandez

SENATE VOTE: On final passage, May 4 — 29-2 (Hall, V. Taylor), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 1844:*

For — Ben Westcott, State Bar of Texas Construction Law Section;
(*Registered, but did not testify:* Peyton McKnight, American Council of Engineering Companies of Texas, Jon Fisher, Associated Builders and Contractors of Texas; TJ Patterson, City of Fort Worth; CJ Tredway, Independent Electrical Contractors of Texas; Sandy Hoy, Texas Apartment Association; Ned Munoz, Texas Association of Builders; Michael White, Texas Construction Association; David Lancaster, Texas Society of Architects; Perry Fowler, Texas Water Infrastructure Network; Tara Snowden, Zachy Construction Corporation)

Against — None

BACKGROUND: Business and Commerce Code, ch. 272 governs certain contracts related to the construction or repair of an improvement to real property located in the state. Sec. 272.001 establishes that if such a contract contains a provision making the contract or any conflict arising under the contract subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by the party promising to construct or repair the improvement.

Interested parties note that the protections for certain construction-related contracts in Texas with respect to voiding a contract clause subjecting a party to another state's law and litigation should be extended to other types

of construction-related contracts.

DIGEST: CSSB 807 would change the type of construction-related contract in which certain provisions can be voided under Business and Commerce Code, sec. 272.001 from a contract principally for the construction or repair of an improvement to real property in Texas to a construction contract concerning real property located in Texas or an agreement collateral to or affecting the construction contract.

The bill would define a "construction contract" for the purposes of that chapter to include agreements such as those entered into by an owner, architect, engineer, material or supplier or equipment lessor for the design, construction, alteration, renovation, or remodeling of a building. Construction contract also would mean an agreement to which an architect, engineer, or contractor and an owner's lender were parties for an assignment of the construction contract or other modification.

The bill would take effect September 1, 2017, and would apply to a contract, or an agreement collateral to or affecting a contract, entered into on or after the effective date.

NOTES: A companion bill, HB 1844 by Workman, was placed on the General State Calendar for May 10.

SUBJECT: Requiring a report and outreach campaign on women veterans

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 6 ayes — Gutierrez, Blanco, Arévalo, Flynn, Lambert, Wilson
1 nay — Cain

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: None

BACKGROUND: Observers note that Texas has the largest population of women veterans in the country, which continues to increase. Some believe that the state should build upon the currently offered services for women veterans.

DIGEST: SB 1698 would require the Texas Veterans Commission (TVC) to submit to the governor, lieutenant governor, and the Legislature a report on women veterans in the state. The report would:

- provide an estimate on the number of women veterans in this state, including those who contact TVC for assistance and those who receive assistance from TVC, the Texas Workforce Commission, the Department of State Health Services, and other state agencies;
- identify the unique problems faced by women veterans; and
- recommend policy proposals, initiatives, and funding levels to address the problems faced by women veterans.

The report would be due November 1 of each even-numbered year, and could be delivered electronically.

The bill also would require TVC's women veterans coordinator, in consultation with the Governor's Commission for Women, the U.S. Department of Veterans Affairs, and other appropriate agencies, to conduct a community outreach campaign to:

- provide information relating to and increase awareness of benefits

and services available to women veterans;

- improve access to benefits and services for women veterans;
- increase participation of women veterans in programs that provide benefits and services;
- provide information on the significant contributions of women veterans in this state; and
- provide information relating to and increase awareness of support groups and other organizations relating to family services, including services for women veterans who are single parents.

The bill would require the women veterans coordinator to establish the women veterans community outreach campaign by November 1, 2018. TVC would be required to adopt rules to implement the campaign.

The bill would take effect September 1, 2017.

SUBJECT: Modifying the savings incentive program for state agencies

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Cospers, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Walle

0 nays

4 absent — Capriglione, S. Davis, Dukes, Wu

SENATE VOTE: On final passage, March 20 — 30-0

WITNESSES: No public hearing

BACKGROUND: Government Code, ch. 2108 governs the savings incentive program for state agencies. Sec. 2108.103 allows a state agency that spends less undedicated general revenue from nonfederal sources than is appropriated to it to retain one-fourth of the saved amount. The amount retained may not exceed 1 percent of undedicated nonfederal general revenue appropriated to the agency for the fiscal year. The agency may use the savings for activities that do not create new or expanded services or require ongoing funding at a later date.

Concerns have been raised that the current incentive structure under the savings incentive program may not provide sufficient encouragement to state agencies to identify and implement efficiencies.

DIGEST: SB 132 would allow an agency that spent less undedicated general revenue from nonfederal sources than was appropriated to it to retain half of the money saved. The bill would remove the provision limiting the amount of savings retained to 1 percent of undedicated general revenue from nonfederal sources appropriated to the agency for the fiscal year.

The bill would require that half of the retained savings be used to make

additional principal payments for general obligation bonds issued by the agency or by the Texas Public Finance Authority on the agency's behalf. If there were no outstanding general obligation bonds, the agency could provide equally distributed bonuses to each agency employee who was a full-time equivalent employee of the agency, worked for the agency as a full-time equivalent employee for the entire fiscal year when the savings were realized, and who was directly responsible for or worked in a part of the agency responsible for the realized savings.

A bonus could not be given to an agency employee who served in an upper management position, including the chief executive or administrator of the agency.

If the amount of realized savings as a percentage of the agency's total amount of undedicated general revenue derived from nonfederal sources was:

- less than 3 percent, a bonus could not exceed \$250;
- at least 3 percent but less than 5 percent, a bonus could not exceed \$500,
- at least 5 percent but less than 10 percent, a bonus could not exceed \$750,
- 10 percent or more, a bonus could not exceed \$1,000.

The bill would require a state agency to adopt rules to implement the provisions of the bill.

The bill would take effect September 1, 2017, and would apply to notice of savings from appropriations to an agency for a fiscal year beginning on or after that date.

SUBJECT: Alert system to help apprehend those harming law enforcement officers

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 7 ayes — King, Nevárez, Burns, Hinojosa, Metcalf, Schaefer, Wray

1 nay — J. Johnson

1 absent — Holland

SENATE VOTE: On final passage, March 13 — 30-0

WITNESSES: For — (*Registered, but did not testify*: Andrew Romero, Austin Police Association; Chris Jones, Combined Law Enforcement Associations of Texas; David Sinclair, Game Warden Peace Officers Association; Jessica Anderson, Houston Police Department; Bill Elkin, Houston Police Retired Officers Association; James Jones, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Mitch Landry, Texas Municipal Police Association; James McLaughlin, Texas Police Chiefs Association; Deborah Ingersoll, Texas State Troopers Association)

Against — None

BACKGROUND: In 2008, Gov. Rick Perry signed an executive order creating a blue alert system to aid in the apprehension of those who kill or seriously injure local, state, or federal law enforcement officers. Some have called for this system to be codified in statute.

DIGEST: SB 1138 would require the Department of Public Safety (DPS) to develop and implement a statewide blue alert system to help apprehend individuals suspected of killing or causing serious bodily injury to a law enforcement officer.

The director of DPS would be the statewide coordinator of the alert system and would have to adopt rules for the system, including ones about the procedures law enforcement agencies would use to verify whether

an individual was suspected of killing or causing serious bodily injury to a law enforcement officer and was not yet apprehended. The director also would have to adopt procedures to report information about a missing suspect to designated media outlets in Texas. DPS would be required to recruit television and radio broadcasters, private entities, government entities, the public and others to help develop and implement the system.

The Texas Department of Transportation would be required to establish a plan to give information to the public through its existing system of dynamic message signs. The bill would establish the requirements for state agencies participating in the system, including a plan for providing information to their officers, investigators, and employees if the system had been activated.

The bill would establish the types of information that law enforcement agencies would have to give to DPS if they suspected someone of killing or causing serious bodily injury to a law enforcement officer and the person had not yet been apprehended. The bill also would establish how DPS would activate the system, including sending an alert to media outlets, law enforcement agencies, and state agencies. The bill also would establish the content of alerts and when alerts would be terminated.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, HB 2189 by Krause, was referred to the Homeland Security and Public Safety Committee on March 21.

SUBJECT: Specifying liability for construction defects; requiring certain disclosure

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 5 ayes — Oliveira, Shine, Collier, Villalba, Workman
1 nay — Romero
1 absent — Stickland

SENATE VOTE: On final passage, April 19 — 29-2 (Estes, Hall)

WITNESSES: For — Clayton Utkov, ABC, TCA; Michael Ward, Greater Metroplex Interiors Inc.; Dale Payne, Prism Electric; Fred Wilshusen, Texas Construction Association; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Marc Rodriguez, PHCC of Texas; Michael White, Texas Construction Association; Perry Fowler, Texas Water Infrastructure Network (TXWIN); Ken Boen)

Against — Scott Oliver, San Antonio Water System; David Lancaster, Texas Society of Architects; (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas; Jody Richardson, Plains All American Pipeline LP; Michael Garcia, Texas Association of Manufacturers; Scott Stewart, Texas Chemical Council; Carol Sims, Texas Civil Justice League; Mari Ruckel, Texas Oil and Gas Association)

BACKGROUND: Observers have noted that while a construction contractor relies on a licensed professional to prepare design documents, the contractor retains liability for a construction defect occurring due to design errors. Some suggest builders should not be responsible for the consequences of errors in documents they are not authorized to prepare.

DIGEST: SB 1215, as amended, would establish that a contractor performing work under a contract for the construction or repair of an improvement to real property was not responsible for the consequences of defects in plans, specifications, or other bid documents provided to the contractor by the

other party to the contract or a representative of the other party to the contract. A contractor could not provide warranty for the accuracy, adequacy, sufficiency, or suitability of these design documents.

The bill would require a contractor to disclose to the property owner any condition discovered during construction that was unknown or could not have been reasonably known during the design phase. A contractor who failed to disclose the condition could be held liable.

A person could not waive these requirements unless the contractor agreed to waive these requirements in writing.

The bill would take effect September 1, 2017, and would apply only to a contract entered into on or after the effective date.

NOTES:

The committee amendment would change the requirements for a person to waive the regulations created by this chapter. As amended, the bill would differ from the Senate-passed version by allowing the contractor to waive the requirements in writing instead of prohibiting all waivers.

SUBJECT: Repealing provisions related to inactive state entities and programs

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Paddie, E. Rodriguez, Smithee
1 nay — Oliveira

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: No public hearing

BACKGROUND: Observers have noted that there are many boards, commissions, and task forces that are currently inactive and outdated and should be abolished.

DIGEST: SB 1731 would abolish and repeal the following entities and provisions:

- the Agriculture and Wildlife Research Management Advisory Committee;
- the State of Texas Anniversary Remembrance Day Medal Committee;
- the Texas Bioenergy Policy Council and related research committee;
- the Border Security Council;
- the Texas Distinguished Service Awards Committee;
- the College Opportunity Act and related committee;
- the Advisory Board of Economic Development Stakeholders;
- the Texas Emissions Reduction Plan Advisory Board; and
- the Fire Ant Research and Management Account Advisory Committee and the Fire Ant Basic Research Program.

The bill would take effect September 1, 2017.

SUBJECT: Removing certain requirements for observations of non-teacher candidates

COMMITTEE: Public Education — favorable, without amendment

VOTE: 8 ayes — Huberty, Allen, Bohac, Deshotel, Gooden, K. King, Koop, Meyer

1 nay — Bernal

2 absent — Dutton, VanDeaver

SENATE VOTE: On final passage, May 15 — 25-6 (Garcia, Menéndez, Perry, Rodríguez, Watson, Zaffirini)

WITNESSES: None

BACKGROUND: 19 TAC, part 7, §228.35 governs requirements for educator preparation programs (EPPs). An EPP must provide at least three formal observations of someone seeking certification as an educator other than a classroom teacher, such as a principal, superintendent, or counselor. In 2016, the State Board for Educator Certification proposed a rule requiring at least one of the formal observations to be conducted in person on the candidate's site.

Concerned parties suggest that allowing formal observations of certain educator candidates to be conducted online could reduce costs while providing flexibility for candidates wishing to be certified.

DIGEST: SB 1963 would prohibit State Board for Educator Certification (SBEC) rules addressing ongoing educator preparation program support for candidates seeking to be certified as an educator other than a classroom teacher from requiring the program to conduct one or more formal observations in person on the candidate's site. SBEC rules would be required to allow each formal observation to occur on the candidate's site or through electronic transmission or other video- or technology-based method.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES: A companion bill, HB 2775 by Phelan, was placed on the General State Calendar for May 10.